

## **REMARKS**

### **I. INTRODUCTION**

Claims 1, 14, and 20 have been amended. Claims 10 and 11 have been cancelled. Claims 1-7, 9, 12-14, and 16-20 are pending in the present application. No new matter has been added. In light of the above amendments and the following remarks, Applicants respectfully submit that all presently pending claims are in condition for allowance.

### **II. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN**

Claims 1, 3, 4, 6, 7, 9, 11, 12, and 20 stand rejected under 35 U.S.C. §103(a) for being obvious over Lee et al. (U.S. Patent No. 6,837,827) in view of Curtin (U.S. Patent No. 5,986,200) and further in view of Lauffer et al. (U.S. Patent No. 5,215,468). Claims 2, 5, 10, and 13 stand rejected under 35 U.S.C. §103(a) for being obvious over Lee, in view of Curtin, further in view of Lauffer, further in view of McHugh (U.S. Patent No. 6,230,047), and further in view of Richardson et al. (U.S. Patent No. 6,135,951).

Claim 1 has been amended and now recites, “An audio pacing device, comprising: a sensing unit to obtain a parameter of a user in physical exercise; a memory to store a plurality of audio signals having predetermined tempo values; and a processing unit configured to (1) determine whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value, (2) select an audio signal having a tempo that enables the user to increase, decrease or maintain the intensity, (3) adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value, and (4) *determine the predetermined tempo values of the plurality of audio signals, wherein the plurality of audio signals are categorized based on their predetermined tempo values.*”

The limitations of cancelled claim 11 have substantially been incorporated into claim 1. In the rejection of claim 11, the Examiner refers to column 9 lines 38-60 in Lee. It seems that the Examiner is specifically referring to Lee’s disclosure that “the device 10

assists the user in reaching the goal by adjusting the frequency of the audible cues to reflect a change in performance needed to meet the goal.” (See Lee, col. 9, ll. 55-58). Lee describes a personal training device adapted to assist a user in reaching performance goals. (See Lee Abstract). However, this disclosure does not meet the recitation that the claimed audio pacing device determines *the predetermined tempo values of the plurality of audio signals*. Increasing the frequency of the audible cue does not equate to determining the actual tempo value of the audible cue. For example, in the claimed invention, if an audio signal has a tempo of 5, the audio pacing device determines that value. In contrast, Lee fails to disclose or suggest that the device (10) is what determines the frequency of the audible cues. In fact, Lee is silent as to what determines the frequency. Usually, as is known in the art, an audio signal is provided to the device with its tempo value. Thus, the claimed invention is novel because the audio pacing device determines this tempo value itself. Accordingly, Lee fails to disclose or suggest an audio pacing device determining “*the predetermined tempo values of the plurality of audio signals*,” as recited in claim 1.

The limitations of cancelled claim 10 have also been incorporated into claim 1. In the rejection of claim 10, the Examiner correctly acknowledges that Lee fails to disclose that the audio signals are categorized based on their tempo value. (See 6/24/09 Office Action, p. 9). To cure this deficiency, the Examiner relies on McHugh. However, McHugh merely states that means 32 for storing rhythm pattern data is programmed with rhythm pattern data and that this data “may include, for example, rhythm tracks that simulate percussion instruments, bass instruments, or any other instruments or combination of instruments that are useful in providing a beat or rhythm.” (See McHugh, col. 5, ll. 3-6). McHugh fails to disclose or suggest that these rhythm tracks are categorized based on their tempo value. In fact, the above cited disclosure of McHugh would lead one of ordinary skill in the art to believe that McHugh categorizes the rhythm tracks based on what type of instrument(s) they simulate. In either case, McHugh fails to disclose or suggest that “*the plurality of audio signals are categorized based on their predetermined tempo values*,” as recited in claim 1.

Applicants respectfully submit that Curtin, Lauffer, and Richardson fail to cure the deficiencies of Lee and McHugh. Therefore, it is respectfully submitted that Lee, Curtin, Lauffer, McHugh, and Richardson, taken alone or in any combination, fail to disclose or suggest determining “*the predetermined tempo values of the plurality of audio signals, wherein the plurality of audio signals are categorized based on their predetermined tempo values,*” as recited in claim 1 and that claim 1 is, thus, allowable. Because claims 2-7, 9, 12, and 13 depend on and, therefore, contain all of the limitations of claim 1, it is respectfully submitted that these claims are also allowable.

Claim 20 also recites, “*determine the predetermined tempo values of the plurality of audio signals, wherein the plurality of audio signals are categorized based on their predetermined tempo values.*” Thus, it is respectfully submitted that claim 20 is also allowable for at least the foregoing reasons presented with regards to claim 1.

Claims 14, 16, 18, and 19 stand rejected under 35 U.S.C. §103(a) for being obvious over Lee in view of Lauffer. Claim 17 stands rejected under 35 U.S.C. §103(a) for being obvious over Lee in view of Lauffer and further in view of Curtin.

Claim 14 recites, in relevant portion, “*determining, by an audio pacing device, the predetermined tempo values of the plurality of audio signals; and categorizing the plurality of audio signals based on their predetermined tempo values.*” As previously stated, Lee, Lauffer, and Curtin, taken alone or in any combination, fail to disclose or suggest these limitations. Therefore, Applicants respectfully submit that claim 14 and its dependent claims 16-19 are allowable for at least the same reasons previously presented with regard to claim 1.

**CONCLUSION**

In light of the foregoing, Applicants respectfully submit that all of the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed. An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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